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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)	CASE NO. 3:24-MJ-71520 MAG PHK
)	
Plaintiff,)	MEMORANDUM IN SUPPORT OF UNITED
)	STATES' MOTION FOR DETENTION
v.)	
)	Date: October 28, 2024
DONTE MARK MOORE,)	Time: 10:30 a.m.
)	Court: Hon. Peter H. Kang
Defendant.)	

INTRODUCTION

The United States respectfully requests that the Court order Defendant Donte Mark Moore ("Moore") detained pending trial in this matter. Moore is charged with one count of Felon in Possession of a Firearm and Ammunition in violation of 18 U.S.C. § 922(g)(1), for which he faces a maximum penalty of 15 years imprisonment. On or about October 7, 2024, in the Tenderloin neighborhood of San Francisco, CA, police recovered from Moore's person, namely his front hooded-sweatshirt pocket, a Glock Model 17 Gen 5 firearm loaded with twenty-two (22) rounds of nine-millimeter ammunition. Moore is currently on probation out of Contra Costa County for a 2023 conviction for California Penal Code ("PC") § 29900(a)(1) – Felon in Possession of a Firearm and is the subject of a probation warrant.

1 He was convicted of PC § 211 Robbery in the Second Degree in 2017, 18 U.S.C. § 922(g)(1) in 2012,
2 and convicted three times between 2009 and 2011 of Transportation/Sale of a Controlled substance
3 under the California Health & Safety Code (“HS”). He has been engaged in criminal activity since at
4 least the age of 15 and has various probation and supervised release violations.

5 Moore presents both a danger to the community and a risk of flight that no condition or set of
6 conditions can mitigate. As discussed below, factors enumerated in 18 U.S.C. § 3142(g) weigh strongly
7 in favor of pretrial detention. Therefore, to safeguard the community and ensure Moore’s appearance at
8 trial, the government request that this Court order Moore detained pending trial.

9 **FACTUAL AND PROCEDURAL BACKGROUND**

10 **I. Moore’s Criminal History**

11 Moore, age 35, has a recorded criminal history that spans almost 20 years. It began as early as
12 2005, when he was just 15 years old. He was arrested in April of that year, suffered a sustained position
13 for possession of a controlled substance, and was sentenced to 36 months probation, programming, and a
14 fine. In August 2005 he was arrested again, this time for assault on a school employee; that case
15 ultimately resulted in Moore suffering a sustained petition for Battery and again receiving a sentence of
16 probation, programming, and a fine. In 2007 he suffered a sustained petition for obstruction/resisting
17 and was sentenced to probation and a fine. Moore’s first adult conviction came in July 2009 for HS §
18 11352(a) Transportation/Sale of a Controlled Substance; he received a sentence of six months jail, three
19 years probation, and a fine. That conviction arose from a March 2009 incident that occurred in the
20 Tenderloin neighborhood of San Francisco. Moore worked in concert with at least two other people,
21 including a 15-year-old female listed as an “at risk runaway” to sell crack-cocaine. Under three months
22 later, in October 2009, he was again convicted of Transportation/Sale of a Controlled Substance, relating
23 to an incident in December 2008, and this time sentenced to 360 days jail and five years probation. Less
24 than a year-and-a-half later, in January 2011, Moore was again convicted of Transportation/Sale of a
25 Controlled substance, again for crack-cocaine, and received a sentence of 115 days jail and three years
26 probation.

27 Less than a month later, on or about February 3, 2011, Moore was caught with a loaded .22
28 caliber revolver at the Powell Street BART station in San Francisco. He ultimately pled guilty to one

count of 18 U.S.C. § 922(g)(1) and was sentenced to a term of 70 months imprisonment and three years supervised release on March 1, 2012.¹ On July 13, 2016, Moore was again arrested, this time for PC § 211 Robbery in the Second Degree. He was convicted on March 13, 2017, and sentenced to five years imprisonment. In December 2022, while he was still on federal supervised release, Moore was pulled over for speeding by Pittsburg Police, who discovered a loaded, unregistered handgun in his car. In February 2023, he was convicted of PC § 29900(a)(1) Felon in Possession of a Firearm and sentenced to 364 days jail and two years probation. Moore was still under that probation supervision when he was arrested on October 7, 2024 in this case.

II. October 7, 2024 Incident

On or about October 7, 2024, at approximately 12:40 p.m., officers from the San Francisco Police Department Crime Gun Investigations Center (“CGIC”) were driving through the intersection of Eddy and Taylor Streets in the Tenderloin neighborhood of San Francisco when they observed Moore ride past them on a scooter. Officers observed a firearm magazine protruding from Moore’s front-hooded sweatshirt pocket. Officers began surveilling Moore and observed that there was a weighty “L” shaped object in his front hooded-sweatshirt pocket. Based on their training and experience, the Officers believed the object was a firearm.

Officers continued surveilling Moore and observed him standing next to a parked car in front of 441 Ellis Street. Officer Kenneth Anderson approached Moore and observed a firearm barrel in his front hooded-sweatshirt pocket. Moore began to retreat, at which point Officer Andre Taylor stopped Moore and conducted a pat-down of his front hooded-sweatshirt pocket. Based on his training and experience, Officer Taylor recognized what he felt as a firearm. Officers Anderson and Taylor detained Moore and Officer Taylor likewise observed the barrel of a firearm in Moore’s front hooded-sweatshirt pocket.

¹ Moore was found to have violated the terms of Supervised Release in December 2020 and sentenced to time served and 33 further months supervised release. That supervised release was revoked in September 2023, and he was sentenced to a further 18 months imprisonment. Oct. 25, 2024 Pretrial Services Report (Dkt. 8, p. 8-9).



Officer Taylor recovered a Glock Model 17 Gen 5 firearm with an extended magazine seated in the well of the firearm's grip from Moore's front hooded-sweatshirt pocket.





The firearm and magazine together contained twenty-two (22) rounds of 9-millimeter caliber ammunition.



An expert from the Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”) in determining the interstate nexus of firearms and ammunition opined that both the firearm and ammunition traveled in and/or affected interstate and/or foreign commerce.

1 The firearm's slide is stamped "Austria," and the grip is stamped "Made in Austria – Glock, Inc.,
2 Smyrna, GA."

3 While being processed at the precinct by one of the transporting officers, Moore stated: "I
4 shoulda[sic] shot you n***as man. I shoulda[sic] shot yo[ur] dumb ass." Moore was charged with
5 various firearms-related offenses by the San Francisco County District Attorney. The District
6 Attorney's Office dismissed its case after the United States Attorney's Office charged Moore. Moore
7 appeared before this Court for the first time on October 24, 2024, and this Court ordered a detention
8 hearing to be held on October 28, 2024.

9 LEGAL STANDARD

10 Under the Bail Reform Act of 1984, the Court must detain a defendant before trial without bail
11 where "no condition or combination of conditions will reasonably assure the appearance of this person
12 as required and the safety of any other person and the community." 18 U.S.C. § 3142(e)(1). Detention is
13 appropriate where a defendant is either a danger to the community or a flight risk—the government need
14 not prove that both factors are present. *United States v. Motamedi*, 767 F.2d 1403, 1406 (9th Cir. 1985).
15 A finding that a defendant is a danger to the community must be supported by clear and convincing
16 evidence, but a finding that a defendant is a flight risk need only be supported by a preponderance of the
17 evidence. *Id.*

18 "[T]he Bail Reform Act mandates an individualized evaluation guided by the factors articulated
19 in [18 U.S.C.] § 3142(g)." *United States v. Diaz-Hernandez*, 943 F.3d 1196, 1199 (9th Cir. 2019).
20 Those factors are: (i) the nature and circumstances of the offense charged; (ii) the weight of the evidence
21 against the defendant; (iii) the history and characteristics of the defendant, including the defendant's
22 character, physical and mental condition, family and community ties, past conduct, history relating to
23 drug or alcohol use, criminal history, and record concerning appearance at court proceedings, as well as
24 whether the crime was committed while the defendant was on probation or parole; and (iv) the nature
25 and seriousness of the danger to any person or the community that would be posed by the defendant's
26 release. See 18 U.S.C. § 3142 (g); *United States v. Winsor*, 785 F.2d 755, 757 (9th Cir. 1986).

27 The Rules of Evidence do not apply at a detention hearing. 18 U.S.C. § 3142(f)(2)(B). It
28 is well settled that at a detention hearing, the government may present evidence by way of an evidentiary

proffer sufficient to make the court aware of the defendant's role in an offense, the weight of the evidence against the defendant, and other relevant factors. See, e.g., *United States v. Salerno*, 481 U.S. 739, 743 (1987).

ARGUMENT

No condition or combination of conditions will reasonably assure both the safety of the community and Moore's appearance as required. See 18 U.S.C. § 3142(e)(1).

I. Moore is a Danger to the Community

Moore's extensive and violent criminal history, his repeated illegal possession of firearms, and the facts of this case all work together to clearly and convincingly establish that he is an acute danger to the community and a public menace. The record before the Court establishes that Moore has been engaging in violent crime since at least 2005, when he suffered a sustained petition for Battery. He has been convicted of *six* felonies since just 2009, including Robbery in the Second Degree² as recently as 2017 and illegal firearm possession in 2012 and 2023, and has spent most of the intervening 15 years in custody. When out of custody, Moore has unrelentingly continued engaging in felonious behavior. As noted in greater detail above, he evidently cannot abstain from serious criminality for any extended period of time. He has involved a minor in his felonious conduct, working with a 15-year-old runaway to sell crack-cocaine. In this case, he was riding around the Tenderloin with a loaded Glock in his pocket, despite recently being released from custody and being on probation for a Felon in Possession of a Firearm case. While being processed by police, he expressed his seeming regret that he had not used his firearm to shoot at officers ("I shoulda[sic] shot you n***as man. I shoulda[sic] shot yo[ur] dumb ass.") Additionally, as noted in Moore's Pretrial Services Report filed on October 25, 2024 (Dkt. 8), Moore's mother stated he has tried to "fight" her and has threatened her in the past, has a "bad temper," and has had dreams in the past that "told him" to wake up and kill his mother.³

Moore has demonstrated through his repeated conduct that he is a danger to the community.

II. Moore is a Flight Risk

² The Ninth Circuit has held that California Penal Code § 211 Robbery in the Second Degree is a categorical crime of violence for purposes of the U.S. Sentencing Guidelines. *United States v. Flores-Mejia*, 687 F.3d 1213, 1216 (9th Cir. 2012).

³ Dkt. 8, p. 4.

1 Separately, Moore is a flight risk because: (i) he has a history of ignoring both the law and
2 release conditions imposed on him, and (ii) the weight of the evidence is against him, there is a high
3 likelihood of conviction in this case, and he is subject to lengthy prison sentence as a result.

4 First, Moore's persistent inability and/or unwillingness to comply with the law establishes his
5 flight risk. He has an almost unbroken chain of criminality spanning his entire adult life. He has
6 consistently committed serious and violent crime while under some form of court supervision, be that
7 probation or supervised release. He committed his 2016 robbery while on supervised release for his
8 2012 federal Felon in Possession conviction. He committed the instant crime while on probation for a
9 2023 state Felon in Possession conviction. There is ample reason to believe he would similarly refuse to
10 follow the Court's orders in this case.

11 Second, Moore is a flight risk because the weight of the evidence is against him and there is a
12 high likelihood of conviction in this case. *See United States v. Gebro*, 948 F.2d 1118, 1122 (9th Cir.
13 1991) (strong evidence of guilt "makes it more likely he will flee"). This is a straightforward case in
14 which there is no reasonable dispute as to any element of the charge. Officers observed the high-
15 capacity firearm magazine, which is in and of itself illegal under California law, poking out of his
16 pocket before stopping him. The firearm was recovered from Moore's person. Moore's prior
17 convictions for crimes punishable by terms of imprisonment exceeding one year are easily provable
18 through records, and the fact that he was in fact sentenced to terms exceeding one year twice (70 months
19 in 2012 and 5 years in 2017) demonstrate conclusively that he had the requisite knowledge of his status.
20 The firearm in question is a Glock, which does not produce firearms in California. An ATF nexus
21 expert has opined that the ammunition was made outside of California. The maximum penalty for the
22 charge in question is 15 years imprisonment, and a provisional Sentencing Guidelines calculation
23 indicates Moore will be facing a lengthy period of incarceration. This provides him with a strong
24 incentive to not appear in this Court.

25 **III. Pretrial Services Report/Recommendation of October 25, 2024**

26 Pretrial Services interviewed Moore on October 24, 2024, after his Initial Appearance before this
27 Court. They analyzed Moore's ties to the community, employment history, criminal history, and other
28

1 factors. Ultimately, Pretrial Services recommended that Moore be detained as a danger to the
2 community.⁴

3 **CONCLUSION**

4 For the foregoing reasons, there is no set of conditions that will reasonably ensure the safety of
5 the community or ensure Moore's appearance at court proceedings. Accordingly, the Court should order
6 Moore detained pending trial.

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8
9 DATED: October 27, 2024

Respectfully submitted,

10 ISMAIL J. RAMSEY
11 United States Attorney

12 /s/ Eli J. Cohen
13 ELI J. COHEN
14 Special Assistant United States Attorney

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⁴ Dkt. 8, p. 11.